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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 44

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, *Petitioner*,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONER

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INDEX

	Page
1. The activities and "purposes" of the American Committee	1
2. The invalidity of the Act by reason of the Board's construction of the aid component	6
3. Divorcing the Board from its order; the "disclosure" justification	11
4. The means component—motive or acts	13
5. The vicarious liability issue	15
6. The self-incrimination issue	16
7. Evidentiary matters	17
(a) The origin of the American Committee	17
(b) The reservoir conclusion	18
(c) Hearsay and opinion evidence	20

CASES CITED

Albertson and Proctor v. S. A. C. B., No. 265, Oct. T., 1964	17
American Communications Assoc. v. Douds, 339 U.S. 382	10
Aptheker v. Secretary of State, 378 U.S. 500	10
Bridges v. Wixon, 326 U.S. 135	20
Cantwell v. Connecticut, 310 U.S. 296	12
Communist Party v. S. A. C. B., 367 U.S. 1	16
Consolidated Edison Co. v. N. L. R. B., 305 U.S. 197, 230	20
DeJonge v. Oregon, 299 U.S. 353	10
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123	12
Scales v. United States, 367 U.S. 203	10
Talley v. California, 362 U.S. 60	13

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1. The Activities and "Purposes" of the American Committee

The government's brief tends to submerge the issues beneath its shopworn, pseudo-historical dissertations on Communism and its supposed tactics, principles and dangers. There is also a danger of ascribing to the American Committee the government's irrelevant

animadversions about Communist-fronts in the abstract—as that such organizations "have attempted to arouse support for Soviet foreign policy," "have also been sources for the recruitment of Party members," and "serve the Communist movement by collecting funds for it" (Resp. Br. 35). Finally, when the government's brief does descend to a discussion of this case, its version of the findings and evidence is distorted and inaccurate.

In the hope of returning this case to its actualities, it is desirable to again consider just what the American Committee does, or has been found to do, to incur the registration death sentence. This is important not only for questions of constitutionality, but also to determine whether the American Committee meets the Act's definition of a Communist-front organization, properly interpreted.

By definition (Act, sec. 3(4)), a Communist-front organization is one which (A) is substantially controlled by the Communist Party and "(B) is primarily operated for the purpose of giving aid and support to" the Communist Party. The "B" half of this definition, which we call the aid component, brings into question the nature of the organization's activities.

We know that there are certain activities which might conceivably be within the aid component which the American Committee does *not* engage in. The government acknowledges (Resp. Br. 71-72) that the organization does not advocate violent overthrow of the government or "engage in any activities directly involving forcible overthrow." Nor do the Board's Report, the opinion below, or the government's brief point to any proof that the American Committee gave

financial assistance to the Communist Party, promoted Communist ideology,[1] or recruited Party members.[2] These are things the American Committee does not do; it is a little more complicated to discover what it does do that supposedly meets the aid component.

The court below held that the aid component was satisfied by the American Committee's "laudable" efforts in devoting itself "to the protection of the rights of all and any foreign-born who seek its help." Thereby, the court reasoned, the organization aided the Communist Party in two ways. (1) It benefited the Party by defending Party members involved in deportation and denaturalization proceedings. (2) It aided the Party more "subtly," but apparently even more substantially, by defending non-Communists and thus winning for the Party public credit for the American Committee's "good deeds." (Pet. Br. 34-37.)

The second part of the court's theory was not reflected in the Board's Report (see Pet. Br. 37) and is disavowed by the government's brief (p. 81, ftn. 34), since it is manifestly contrary to the government's position that Communist-front organizations hide any connection with the Communist Party. This leaves us with the proposition that the American Committee satisfies the aid component solely by defending, among

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[1] We feel justified in ignoring the peculiar view of the court below that the American Committee promotes "Communist doctrine" by maintaining that the political deportation statutes "were premised on political opinion and threatened the freedom of all American people to their political opinions" (R. 82).

[2] Even if an organization does engage in such activities, it does not satisfy the aid component unless these activities are so predominant as to constitute the group's "primary" operation.

others, members of the Communist Party facing deportation and denaturalization proceedings.[3]

The Board's theory is more obscure. But once we realize that it considered that the aid component depends on an organization's "purpose" (i.e. motivation) rather than its actions (see Pet. Br. 28-34), it appears that the Board's authoritative conclusion as to why the American Committee meets the aid component is stated in the following passage in its Concluding Findings (R. 65):

> "The weight of the credible evidence established that the purposes of respondent have in fact been to fight in many ways to prevent the deportation from the United States of members and officers of the Communist Party of the United States, and secondarily, to seek to win the good will of a certain sector of the population as a reservoir from which could be drawn adherents to and supporters for the programs and aims of the Communist Party."

Thus again, as appears from the first clause of this passage, the American Committee is held to meet the aid component because it defends (or has the purpose of defending) Communists (among others) in deportation proceedings.

The second clause of this passage refers to a "secondary" purpose to create a reservoir of possible adherents to the Communist Party. The clause is on its face irrelevant, since the aid component explicitly refers to an organization's *primary* operations (or pur-

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[3] The government says (Resp. Br. 81) that the court below also found that the American Committee aided the Party "by building sympathy" for it. There is nothing in the court's opinion to support this assertion.

pose). In any event, the government's brief confirms our contention (Pet. Br. 80-83) that this "reservoir" conclusion of the Board is not supported by the record or the Board's own evidentiary findings. Considering that the American Committee has been at work since 1933, the only meaningful evidence to support the conclusion would be evidence of instances in which the Communist Party obtained adherents or supporters as a result of the American Committee's good-will reservoir. Neither the Board's Report nor the government's brief cites a single such instance.

The best the government's brief can offer is the vapid speculation that "there is a strong likelihood that this is petitioner's purpose" (Resp. Br. 92). The government thinks that this "strong likelihood" exists because "other evidence shows that petitioner is controlled by the Communist Party and that the Party actively supports petitioner" (*ibid.*). We deny the premise, but even if it were true, the conclusion would not follow. For if, as the Board held, the American Committee's primary purpose is to defend Party members involved in deportation proceedings, it is superfluous to invent an additional reason for Party support of and interest in the organization.[4]

In sum, if the American Committee meets the means component, that is because it defends Communists (as well as non-Communists) in deportation proceedings. This defense activity includes supplying counsel in, and bearing the cost of, the administrative and court proceedings, publicizing the cases, and agitating for the repeal of the political, as well as non-political, deporta-

[4] We later show (*infra*, pp. 18-19) that there is no substance to the government's contention that its "inference is supported by substantial direct evidence" (Resp. Br. 93).

tion laws (see Pet. Br. 9). The issues are whether this activity, or "purpose" if one prefers, satisfies the means component, properly construed, and, if so, whether the Act is constitutional.

2. The Invalidity of the Act by Reason of the Board's Construction of the Aid Component

The activities for which the American Committee has been condemned—its sponsorship of litigation, publicizing of cases, and agitation for reforms of the immigration laws—are all protected by the First Amendment (see Pet. Br. 103). So, of course, is the right of association in the American Committee. There can be no question but that the exercise of these rights is drastically inhibited by the application of the Act to the organization. This inhibition occurs in different stages and various ways.

The initial impact comes with the start of the proceeding. An organization which depends on public support and which seeks to influence public opinion is intolerably handicapped merely by being formally accused of subversion by the government and being required to account for itself before a government agency bearing the Board's ominous name. Next, the proceeding itself, featuring the slanders of professional government informers, further injures the reputation of the organization and obliges it to divert to its self-defense energies and resources which would otherwise be expended to promote its causes. Then the Board's decision, accompanied by a defamatory Report, officially brands the organization. The registration order requires the organization to sacrifice its integrity and privacy by signifying acquiescence in the defamatory designation and by spreading before a now-inflamed public the details of the organization's affairs, includ-

ing the names of its dues-paying members[5] and contributors. And as soon as the registration order becomes effective, there also become applicable numerous severe sanctions on the organization and its members (see Pet. Br. 5).[6]

The net effect of all this—and usually of only part of all this—is to destroy the organization and thereby the ability of individuals to associate in it, the ability of the organization to engage in speech, press and assembly, the ability of the public to hear what the organization has to say, and the ability of persons who would otherwise benefit from the organization's work (here the foreign born) to receive such benefits. Moreover, the application of the Act to any organization—and even the mere presence of the Act on the statute books—inevitably restrains the advocacy and activities of other organizations and the willingness of the public to join organizations (see Pet. Br. 42-43). In short, the Act constitutes an unprecedented and virulent governmental supervision over voluntary associations and the rights of speech, press and association.

We need not repeat our discussion (Pet. Br. 102-05) of which of the Act's restrictions of First Amendment

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[5] It is disingenuous of the government to represent (Resp. Br. 111-13, 132) that the Act is more tender to organizations found to be Communist-fronts than to the Communist Party because it does not require the former groups to disclose the names of their members. Section 7(d) of the Act requires such groups to list the sources of all moneys received, and thereby the names of all dues-paying members.

[6] It is beside the point that the validity of the sanction provisions is not at issue in this proceeding. The mere presence of the sanctions, so long as they have not been held unconstitutional, is a major deterrence to association with and the functioning of the organization.

rights are "direct" and which "indirect," and whether the Act must be tested by the clear and present danger test or by the balancing test. Under any theory, it is clear that at a minimum the Act's conspicuous consumption of fundamental liberties can be constitutional only if there exists a compelling justification for the legislation.

The justification which the Act claims for itself (section 2), and which the government's brief asserts at *inordinate length*, is the need to protect the national security from the assertedly dangerous methods and objectives of the world Communist movement. We are unable to see how any danger to the national security is created by the American Committee's admittedly 'laudable' and peaceable activities in protecting the interests of the foreign born. For this reason, as well as on the basis of other conventional criteria of statutory construction (Pet. Br. 39-49), we believe that the means component, properly construed, excludes application of the Act to the American Committee or other organizations whose work consists of innocent activities directed toward innocent objective. Correctly construed, the Communist-front provisions of the Act apply only to organizations which, in a realistic and reasonably direct manner, aid the Communist Party in carrying out the sinister activities attributed to it by section 2 of the Act.

Our construction does not necessarily mean, as the government innocently assumes (Resp. Br. 71-72) that the only Communist-front organizations within the meaning of the Act are those which advocate or act to effectuate the violent overthrow of the government. The Act may also include, for all we know, organizations which disseminate Communist ideology generally

or which operate to recruit members or raise funds for the Communist Party. But if we are not sure of what the Act includes, we are convinced that it does not, and constitutionally cannot, include an organization whose work consists of peaceably defending the interests of the foreign born, including Communists, even if it also criticizes our immigration laws and their administration by the Department of Justice.

The government justifies applying the Act to organizations engaged solely in "laudable," benign activities by the following reasoning:

1. Communism is a menace to the national security.

2. Therefore the government can restrain Communists from doing anything which might conceivably benefit the Communist movement, even if the activity is so remote from violent overthrow as defending Communists involved in litigation or agitating for causes (such as integration) which are favored by the Communist Party as well as by non-Communists. For reasons we do not comprehend, however, it is assumed that the government cannot apply like restraints to those who, like Wendell Willkie (Resp. Br. 79), are not Communists nor controlled by Communists.

3. The restraints which can be applied to Communists can also be applied to organizations "controlled" by the Communist Party. because such groups are "in effect subsidiaries of the Communist Party" and "an integral part of an organization which supports forcible overthrow" (Resp. Br. 79).

The government's syllogism is outlandish. Under it, the government could not prevent Wendell Willkie from defending William Schneiderman in a denaturalization case, but it could prevent Schneiderman from

defending himself. The government's contention contradicts the principle that whatever power the government has to control speech depends on the nature of the speech, not the identity or affiliations of the speaker. *DeJonge* v. *Oregon,* 299 U.S. 353. Moreover, Communists cannot, merely because they are Communists, be restrained from peaceable association and advocacy (*Scales* v. *United States,* 367 U.S. 203) or from enjoying liberties protected by the due process clause. *Aptheker* v. *Secretary of State,* 378 U.S. 500. The Court has upheld debatable measures aimed at Communism, but always on the thesis that they were directly and immediately pertinent to controlling dangerous acts or advocacy. Cf. *American Communications Assoc.* v. *Douds,* 339 U.S. 382. The Court has never countenanced restraining Communists from peaceably seeking to advance reforms, associating for non-revolutionary purposes, or defending themselves from government prosecutions.

Even if there were some implied exception to the Constitution that Communists and the Communist Party have no constitutional rights, it would be unthinkable to stretch the exception to include organizations which, though concededly consisting mostly of non-Communists (Pet. Br. 47), are found to be "controlled" by the Communist Party. For contrary to the government's argument, the "control" which satisfies the Act is not the kind of relationship which exists between parent and subsidiary corporation or which makes one group an "integral part" of another. Instead, the Act's "control" depends on nothing more than a gossamer, unenforceable, psychological "disposition" (see Pet. Br. 107; Resp. Br. 60-61). And how is this "control" found? Nor by a jury or the judicial process, but by a Board of political appointees

which, according to the government, may derive its conclusions from stale evidence (Resp. Br. 66-67), from the unsubstantiated, conclusory opinion evidence of professional informers (Resp. Br. 84-86), and from hearsay evidence (Resp. Br. 87), but which, nevertheless, must be allowed broad discretion to determine the credibility of witnesses and the admissibility of evidence (Resp. Br. 58) and whose findings must be given great weight (Resp. Br. 57).

3. Divorcing the Board From Its Order: the "Disclosure" Justification

The government urges the Court to consider the constitutionality of the Board's authority to find that organizations are Communist-fronts separately from the constitutionality of the requirement that organizations found to be such must register (Resp. Br. 101-02). In its view, the finding authority can be held constitutional even if the registration requirement is not, as an exercise of Congress' supposed power to disclose to the public the true nature of clandestine groups (Resp. Br. 102-03).

This separation of the Board from its order seems far-fetched, nor can we believe that Congress ever contemplated setting up an executive agency solely for the purpose of supplementing or supplanting the efforts of the House Committee on Un-American Activities.

In any event, the Board's authority to compile a blacklist of organizations is plainly unconstitutional even if it be divorced from the Act's registration requirements. A governmental "disclosure" which consists of stigmatizing an organization constitutes, even without more, a serious deterrence to the exercise of constitutional rights (*supra*, p. 6) and requires justi-

fication. Cf. *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123. And just as the government may not decide for the public what is a religious cause (*Cantwell* v. *Connecticut,* 310 U.S. 296), neither may it determine the suitability of conduct or association protected by the First Amendment.

The Board's determination serves not a disclosure function, but rather the role of attaching an invidious label to frighten away public support. What are the "disclosures" made by the Board's determination? They are, manifestly, two—that the Communist Party "controls" the organization (the control component) and that the organization operates to aid the seditious objectives attributed to the Communist Party (the aid component). These are not facts, but epithets.

The *facts* from which the Board here drew its conclusion as to the aid component did not need to be disclosed by the Board. For the American Committee has always made public to the world its defense of Communist, as well as non-Communist, members of the foreign born community, and its opposition to political, as well as non-political, deportation statutes. So far as the means component is concerned, the "disclosure" contributed by the Board's determination consists of attaching to these activities the invidious label that they are subversive measures. We think this label misinforms the public and is palpably fraudulent. But in any event, the best that can be said for it is that it represents a debatable political opinion decreed by the government, at the expense of the American Committee's survival, as the orthodox and safe position.

Considering the attentuated nature of the "control" which satisfies the Act (*supra,* p. 10), the Board's determination of that element is also no more than an

epithetic opinion masquerading as a statement of fact. Here the Board's conclusion of control is essentially based on a dubious inference drawn from highly questionable evidence that Abner Green was once a member of the Communist Party and in 1942 was preferred by the Party over another candidate for the post of executive secretary of the American Committee. That Green was the executive secretary of the American Committee and its principal figure, and that his speeches and writings exhibited non-conformist views, were never hidden, and did not need to be disclosed by, the Board. There is no basis for finding that Green ever engaged in dangerous activities or utilized his post to do anything contrary to the policies and wishes of his organization and its national conferences. Under these circumstances, the government had no business "disclosing" his private political affiliations. Cf. *Talley* v. *California*, 362 U.S. 60; see Pet. Br. 108. Still less is it justified in attaching a subversive label to the American Committee because of Green's supposed affiliations. No organization is safe if the government can so brand it on the basis of administrative findings that its officers are Communists.

4. The Means Component—Motive or Acts

The Board construed the means component to depend on an organization's motive (called "purpose") rather than on its actual aiding of the Communist Party (Pet. Br. 28-34). For reasons which need not be repeated (Pet. Br. 48-49), we believe this construction is erroneous.

The government's brief states that "on its face, the Act seems to require only a showing of purpose and not of actual aid and support." It suggests, however that the question need not be decided because "there

will rarely, if ever, be a case in which purpose is shown that there is not some actual aid." (Resp. Br. 80.)

The difference between "purpose" (motivation) and actual aiding is not, however, inconsequential. For if it is the latter that counts, the Board must find not merely "*some* actual aid" to the Communist Party, but that aiding the Party was the predominant portion of the organization's work. This is so because the aid component requires that the organization be "primarily operated" to give aid to the Party.

As we have seen, the Board held that the primary purpose of the American Committee was to defend Communist Party members involved in deportation cases. But the Board did not hold that the carrying out of this purpose constituted a primary or predominant part of the organization's activities.

In order to make such a finding, it would be necessary, at a minimum, to determine how many Communists the American Committee defended as compared to the total number of aliens it defended. Abner Green, the one person who was in a position to know the facts, testified that over a twenty-year period, the American Committee defended 3,000 to 4,000 deportation cases, of which about 350 to 400 involved charges of Communist Party membership or affiliation (Pet. Br. 10; Resp. Br. 17). The Board considered that the number of the latter cases "is not necessary or important," but stated, "Other evidence of record indicates a much higher proportion, at least in excess of fifty percent" (R. 58, ftn.). The Board, however, did not identify this "other evidence," and we know of none.[7]

[7] It is typical of the government's brief that it cites the Board's estimate as an established fact, though without citing any evidentiary basis for the estimate (Resp. Br. 16, 18, 83).

Both Green's estimate and the Board's involved cases in which the *accusation* was of *past or present* Party membership. Thus the estimates include cases in which the accusation was unfounded (as in Soldo's—Pet. Br. 11-12) or was of long-past membership. There is thus no basis in either the evidence or the findings to hold that the American Committee "primarily operated" to defend members of the Communist Party.

5. The Vicarious Liability Issue

The government claims (Resp. Br. 3, 146) that we did not raise in the petition for certiorari our contention (Pet. Br. 53-56) that the Act was unconstitutionally applied by holding the American Committee vicariously liable for the acts and personnel of Area Committees with which the American Committee cooperated, but which it did not control.[8]

The claim is without substance. Our constitutional contention is clearly included in the first of our Questions Presented (Pet. 2; Pet. Br. 2), which is: "Whether the provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face or as applied in this case." And more specific notice was given in the seventh Question Presented (Pet. 3; Pet. Br. 3): "Whether an organization may be found to be a Communist-front organization on the basis of evidence and findings concerning other organizations with which it cooperates but which it does not control." Again, in the body of the petition for certiorari (p. 30, emphasis supplied), we stated: "We think that the Act does not authorize,

[8] The Board's holding was based on an erroneous construction of section 3(2) of the Act. The court below affirmed the Board's holding, but without mentioning section 3(2). Pet. Br. 50-53.

nor does the Constitution permit, imposing liability on an organization for the conduct of other organizations with which it is 'intermeshed'—whatever that means—but which it does not control."

6. The Self-Incrimination Issue

The government also asks the Court not to consider our contention (Pet. Br. 112-13) that the Act conflicts with the privilege against self-incrimination, on the ground that, "Since this contention was not raised below this Court should consider it only in exceptional circumstances" (Resp. Br. 149).

Our brief expressly stated (p. 112) that consideration of our contention would require the Court to overrule its holding of prematurity in *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 105-10. The government agrees, although it seems to think that it originated the idea, saying: "Indeed [*sic*], petitioner's argument, as we will show [*sic*], would require overruling of the decision in the *Communist Party* case." The government adds: "It is particularly inappropriate, we submit, to consider overruling a recent determination by this Court, where the litigant has not even raised the issue below." (Resp. Br. 149.)

We cannot follow the government's reasoning. Nothing could be more "inappropriate" than to require litigant to indulge in the futility of urging a court of appeals to exceed its authority by "overruling a recent determination by this Court."

In reply to the government's contention that registration dotes not compel self-incrimination of an organization's officers (Resp. Br. 154-62),[9] we adopt the

[9] The initial issue, we think, is whether the registration order against the Communist Party violates the privilege of the officers of that organization (see Pet. Br. 112).

arguments made in the petition for certiorari (pp. 9-10) and the memorandum replying to the opposition to the petition (pp. 3-6), filed in *Albertson and Proctor* v. *S.A.C.B.*, No. 265, Oct. Term, 1964.

7. Evidentiary Matters

a. The Origin of the American Committee

In claiming evidentiary support for the Board's conclusions on both the support and aid components, the government's favorite morsel is that the American Committee "grew out of" the International Labor Defense (ILD) (Resp. Br. 4, 13-14, 22, 24, 61, 83, 93). This assertion as to the origin of the American Committee is irresponsible and rests on a misrepresentation, which can hardly be inadvertent, of the Board's findings.

The government states in a footnote (Resp. Br. 4-5) that, "While the Board did not explicitly find that petitioner arose from the International Labor Defense," the Board "concluded" that the ILD's Committee for Protection of Foreign Born "was the same as" the American Committee.

In fact, the Board's Report contains no finding or conclusion, either explicit or implicit, that the American Committee grew out of, was the same as, or ever had any kind of connection with the ILD or any ILD committee. The Board's only finding as to the origin of the American Committee was that the organization has existed "since in or about 1932 or 1933" (R. 20).

At a later point, in discussing activities *of the Communist Party* in the foreign-born field, the Board related (R. 37) that in 1932 there was established "a Council or Committee for Protection of Foreign Born

to take over and relieve the ILD of the technical work (legal defense, bail, etc.) in deportation cases." But nowhere did the Board find or suggest that this ILD Council or Committee[10] ever had anything to do with or "was the same as" the American Committee. This explains why the government's present assertion that the Board made such an identification (Resp. Br. 5, ftn.) is not annotated to the Board's Report.

The government also suppresses the fact that testimony of the Attorney General 's witness Hartle showed that in 1933 there simultaneously existed both an ILD committee defending the foreign born and the American Committee (Tr. 1730-32), a fact which negatives the claim that the two groups were the same and which helps explain why the Board did not find any such identity.[11]

b. The Reservoir Conclusion

In support of the Board's concluding finding that a secondary purpose of the American Committee was " to seek to win the good will of a certain sector of the population as a reservoir from which could be drawn adherents to and supporters for the programs and aims of the Communist Party" (R. 65; see *supra*, pp. 4-5), the government alleges that the Board's "inference is supported by substantial direct evidence" (Resp. Br.

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[10] The government's brief misleadingly calls the ILD group a "Committee" without mentioning that the record is uncertain, as found by the Board (R. 37) in the light of the government's evidence on the subject (Tr. 262), whether the ILD group called itself "Committee" or "Council." There is no suggestion in the record that the American Committee ever called itself "Council."

[11] In any event, the 1932 ancestry of an organization is not a reliable index of its nature in 1960.

93). The government cites (*ibid.*) three items of this evidence.

The first is the fabrication, which we have just discussed, that the American Committee grew out of the ILD.

The second item is that, "Two witnesses testified that petitioner's Northwest committee was formed in part to attract the foreign born to support Party position." We cannot take this "evidence" seriously, since it consists exclusively of hearsay testimony by Harper and Hartle of what Henry Huff had said seven years before (see Pet. Br. 69-70). Nor is there any evidence or finding that the Northwest Committee ever did attract anybody to Party positions, or that the American Committee was aware of Huff's conversation.

The government's third and last bit of evidence is that John Lautner, the professional witness whose cross-examination the Board curtailed (Pet. Br. 98-102), "testified that petitioner's leaders carried out Party policies within petitioner, which would include attracting the foreign born to the Party." The reference this time is to the conclusory, unsupported opinion testimony of a witness who knew nothing about the policies carried out by the American Committee (see Pet. Br. 64-67). Moreover, it is a non-sequitur to suppose that the carrying out of unidentified Party policies within an organization necessarily includes whatever particular policy—in this case "attracting the foreign born to the Party"—the government would like to attribute to the organization.

c. Hearsay and Opinion Evidence

The government justifies the Board's inordinate reliance on hearsay and double hearsay[12] on the ground that "this evidence was consistent with other non-hearsay evidence" (Resp. Br. 88). We believe that reliance on hearsay is not permissible in a proceeding which, like this one, involves fundamental constitutional liberties. See *Bridges* v. *Wixon*, 326 U.S. 135, 153-54. And even in other administrative proceedings, the test is not whether there is "consistent" competent evidence, but whether the particular hearsay is corroborated. *Consolidated Edison Co.* v. *N.L.R.B.*, 305 U.S. 197, 230.

When we examine the evidence which the Board cites in support of the hearsay (Resp. Br. 82-83), we find that it does not come close to being corroborative or even "consistent." That evidence consists of the following: (1) Another repetition of the misrepresentation that the American Committee grew out of the ILD; (2) the irrelevant fact that the American Committee defends Communist aliens and opposes the Communist deportation statutes; (3) the incompetent opinion testimony of the Attorney General's informer witnesses about the "purposes" of the American Committee or Area Committees (see Pet. Br. 67-68), and (4) the incompetent opinion testimony of Lautner (whom the government describes as "witnesses") that officers of the American Committee carried out Party policies (see Pet. Br. 64-67).

One of our objections to the testimony of these witnesses on the purposes of the American Committee and

[12] The Board relied on hearsay to support its conclusions on both the aid component and the control component (Pet. Br. 68, 69-71, 89).

Area Committees was that because of their lack of acquaintance with the organizations they were plainly not qualified to give such opinions (Pet. Br. 66-68). It is no answer, as the government seems to think, that the witnesses may have known something about the Communist Party (Resp. Br. 85-86).

Respectfully submitted,

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